

DECISION



19256
Roberts
Ph 2
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-199547.2

DATE: August 26, 1981

MATTER OF: Kirschner Associates, Inc.

DIGEST:

Award of cost reimbursement contract requires informed judgment as to whether proposal costs are realistic and award of cost-type contract requires more than acceptance of proposed cost as submitted merely because low offeror has history of performing without cost overruns or low offer is close to lower technically ranked offer.

Kirschner Associates, Inc. (Kirschner), protests the Department of Health and Human Services (HHS) award of a contract to Contracting Corporation of America (CCA) under request for proposals (RFP) No. ROV-ACYF-80-0002. The solicitation was for training and technical assistance to Head Start Program grantees.

Kirschner contends that CCA cannot provide the required skilled staff and cover travel expenses to satisfactorily perform the contract at its proposed (and awarded) cost-plus-a-fixed-fee price of \$278,448 for the initial year. Kirschner points out that CCA's price proposal was approximately 73 percent of Kirschner's offer of \$379,538. Therefore, Kirschner contends that either it was misled by the Government as to staff skill requirements and amount of travel involved, or that CCA misrepresented its costs and cannot provide the required effort for the cost it proposed. We view the thrust of this protest as a complaint against the adequacy of the HHS cost realism analysis, and we conclude that this analysis was deficient.

HHS received and evaluated four proposals in response to the RFP, three of which were considered technically acceptable and were included in the competitive range. After best and final offers were received, HHS evaluated and ranked them as follows:

116228

018217

	<u>Technical Score</u>	<u>Technical Rank</u>	<u>Cost</u>	<u>Cost Rank</u>
Kirschner	84.00	1	379,538	3
CCA	77.50	2	278,448	1
CSR, Inc.	66.00	3	284,007	2

Based on its evaluation, HHS conducted a "Cost/Price/Benefit/Analysis" and concluded that Kirschner's higher technical ranking was not of such a benefit when compared with CCA's technical ability as to warrant an additional expenditure of approximately \$100,000. Therefore CCA was selected for award. In the final analysis, cost became the determining factor in selection, in view of the significant cost disparity and the relatively small difference in technical scores.

Cost Analysis

Kirschner's contention that CCA materially misrepresented its cost to the Government to the extent that CCA will not be able to satisfactorily perform the contract without cost overruns brings into question the cost realism determination made by HHS.

In this regard, Federal Procurement Regulations (FPR) § 1-3.807-2(a) (1964 ed.) provides that generally some form of price or cost analysis should be made in connection with every negotiated procurement action. The method and degree of analysis, however, is dependent on the facts surrounding the particular procurement and pricing situation. The regulation also states that "the extent of the cost analysis should be that necessary to assure reasonableness of the pricing result, taking into consideration the amount of the proposed contract and the cost and time needed to accumulate the necessary data for analysis."

Our Office has recognized that a low cost estimate proposed by an offeror should not be accepted at face value and that an agency should make an independent cost projection of the estimated costs reflected in the cost proposal. PRC Computer Center, Inc., et al., 55 Comp. Gen. 60 (1975), 75-2 CPD 35. This is to ensure that costs are examined in terms of their realism since the Government will be obligated under a cost-reimbursement type

contract to reimburse the contractor its allowable costs. Moshman Associates, Inc., B-192008, January 16, 1979, 79-1 CPD 23. We have also noted that conducting a cost realism evaluation is a function of the contracting agency whose determinations will not be disturbed by our Office unless they clearly lack a reasonable basis. Moshman Associates, Inc., supra.

Thus, the award of a cost-reimbursement contract requires the exercise of informed judgments as to whether proposed costs are realistic; award of a contract on the basis that the costs proposed are reasonable per se because they are low on a comparative basis is improper without an appropriate analysis that adequately measures the realism of such low costs. Where the award of a contract is based ultimately on the estimated cost for performance of the contract, a determination of cost realism requires more than the acceptance of proposed costs as submitted. Joule Technical Corporation, B-192125, May 21, 1979, 79-1 CPD 364. In our view, the cost realism analysis was deficient.

For example, the solicitation required the contractor to pay travel and per diem costs for grantee personnel and others attending the Head Start Directors' meetings. As discussed in more detail below, these costs should be the same without regard to the contractor selected, since the contractor merely acts as a conduit to pay the costs incurred by third parties who attend HHS-sponsored conferences. In this case, CCA proposed travel and per diem payments which were lower than Kirschner's not only as to the rates proposed but also as to the total number of days proposed for conference attendees.

HHS's evaluators noted that CCA's proposed costs for conference attendees were premised upon a lesser number of days than that called for in the solicitation. When this aspect of CCA's proposal was probed during oral discussions, CCA argued that these proposed costs were justified by CCA's prior experience conducting comparable conferences where "no shows" and attendance patterns reduced actual per diem below that projected. CCA's budget for air fare was also reduced, based on its asserted experience. This explanation apparently satisfied HHS's contracting personnel, since no further mention of the matter appears in the record.

On the other hand, Kirschner's proposed costs in this respect were based on the full extent of the attendance specified in the RFP. Kirschner stated that these costs may be overstated and that they were based on certain "generous" assumptions. Yet HHS made no attempt to normalize these costs when comparing them to those proposed by CCA, although the actual costs incurred would likely be similar.

There were also marked differences between Kirschner and CCA for the costs proposed for air fares, car rentals, per diem rates and mileage allowances (for those persons who chose to drive to the various workshops instead of utilizing public transportation). Except for the contractor's staff and its consultants, the same people would be attending these conferences--yet HHS was willing to accept this disparity without making any attempt to determine the cost realism of either proposal in this regard.

We also note that HHS did not consider the staff positions proposed by CCA for the contract to be adequate for the work required. As a result it reduced CCA's technical score by three points. Since the award nevertheless was made to CCA, we can only assume that HHS, in the course of contract performance, would insist on adequate staffing so that the required work would be performed. HHS did not, however, make any adjustment to the cost proposed to reflect what it deemed an adequate staffing level.

We further note that CCA failed to project any increase in costs over the 3-year period of contract performance, including options. Given the inflation experienced over the last several years, we believe that CCA's cost proposal should have contained a credible explanation of how CCA intended to provide the same level of services each year at a constant cost or, alternatively, included an adjustment for inflation. For comparison, Kirschner proposed an increase in costs of nearly eight percent over the course of the contract. In the absence of either a rationale supporting constant costs or an adjustment for inflation, we do not believe that HHS was free to accept CCA's costs as proposed. In any event, HHS should have conducted a meaningful analysis to determine if CCA's proposed costs were realistic. The record is devoid of any such analysis.

The extent of the HHS contracting officer's cost realism analysis was his notation that CCA's proposed offer was only \$6,500 below the next low offer, that of a firm receiving the lowest technical score, and that CCA was currently performing another similar contract without cost overruns. In light of the record, we do not believe that HHS has satisfied the regulatory requirement for an appropriate cost realism analysis, and question whether HHS's determination that CCA's costs were realistic had a reasonable basis.

As noted above, selection was premised upon the assumption that the relatively small difference in technical merit was not worth the substantial difference in proposed costs. To the extent that HHS failed to properly assess CCA's cost realism, HHS's selection rationale is not supported by the record, since a smaller cost difference could have resulted in the selection of Kirschner's higher ranked technical proposal. We therefore sustain the protest.

Grantee Travel and Per Diem Costs

The above discussion considered HHS's evaluation and selection within the parameters of the solicitation as issued. We note, however, that HHS's structuring of the solicitation created a significant problem when evaluating cost realism. That is, where a contractor is to act as a conduit for payment of travel and per diem to third parties, such as representatives of local agencies having Head Start grants, we seriously question whether one offeror should be able to propose payments which differ from those of its competitors.

We believe that the travel and per diem rates paid to grantee personnel should not be determined by the contractor, since these individuals are not subject to the contractor's personnel policies and travel procedures. To the extent that the solicitation permitted offerors to propose varying costs for conference attendees, we believe that it failed to inform offerors in a clear and unambiguous manner of the work required by the contract necessary for competition on an equal basis. Norfolk Conveyor Division of Jervis B. Webb Company; H. C. Campbell, Inc., B-190433, July 7, 1978, 78-2 CPD 16.


For the future, should HHS continue to utilize its technical support contractors as a conduit for paying costs incurred by grantee personnel attending HHS-sponsored meetings, these costs should be normalized by specifying predetermined travel costs, per diem rates and total numbers of grantee personnel attending such meeting. With the costs of attendees' travel and per diem predetermined in this manner by HHS, all offerors will have an opportunity to propose on an equal basis.

Corrective Action

With regard to the inadequate cost analysis, we note that as a result of our recommendation in University Research Corporation, B-196246, January 28, 1981, 81-1 CPD 50, HHS already has taken steps to avoid recurrence of this deficiency by amending its procurement regulations to include a more extensive discussion of the requirement for a definitive cost analysis. 45 Fed. Reg. 64911 (1980) (to be codified in 41 C.F.R. Part 3-3).

As to the present procurement, we are advised that HHS has exercised the first option year of the CCA contract effective August 1, 1981. Nonetheless, because of the deficiencies noted and the possibility that, had a proper cost realism analysis been conducted the protester would have been selected for award in light of its higher technical score, we recommend that HHS conduct a new competition and, if CCA is not selected as the winner, that the present contract be terminated. We also recommend that HHS specify per diem rates, mileage allowances, and all other reimbursable cost elements which relate to the grantees' attendance at the conferences.

The protest is sustained.


Acting Comptroller General
of the United States